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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Tehama)

L. T.,

Petitioner,

v.

TEHAMA COUNTY SUPERIOR COURT,

Respondent;

TEHAMA COUNTY DEPARTMENT OF SOCIAL  
SERVICES,

Real Party in Interest.

C064205

(Super. Ct. No.  
J11740)

L.T. (petitioner), mother of B.T. (the minor), seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) to vacate orders of the juvenile court denying reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> Petitioner contends the court erred in denying her reunification services after finding the requirements of

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<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

section 361.5, subdivision (b)(2), had not been met. For the reasons that follow, we deny the petition.

#### BACKGROUND

On July 27, 2009, petitioner voluntarily placed the minor with her mother and stepfather and agreed to participate in services to address her physical and mental health problems. She was provided voluntary and court-ordered services. Petitioner, however, did not appropriately participate in mental health services or properly self-administer her medication.

On August 16, 2009, petitioner was placed on a section 5150 hold. She had been exhibiting bizarre and inappropriate behavior, placing the minor at risk. Tehama County Department of Social Services (the Department) formally detained the minor and filed a section 300 petition on the minor's behalf.

The originally set jurisdiction hearing was continued due to petitioner's admittance to a psychiatric hospital, and later continued twice so that petitioner could meet with counsel. At the October 15, 2009, jurisdiction hearing, the juvenile court sustained the petition and ordered petitioner to participate in a psychological evaluation and make and keep an appointment with the Department within one week. The disposition hearing was set for November 9, 2009.

Petitioner did not complete the Department's Social History questionnaire, provided October 21, 2009, nor submit to the court-ordered psychological evaluation (which had been arranged twice by the Department). On November 9, 2009, she was unavailable because she was in a mental crisis unit in Yuba City

pursuant to section 5150. When she was released, she left the area and went to live with her father in South Dakota, where she was placed on another mental health hold.

After being continued several times due to petitioner's absence, the disposition hearing went forward in her absence on February 4, 2010. Petitioner's counsel represented that petitioner remained in South Dakota and had no intention of returning to Tehama County.

The Department recommended petitioner not be provided reunification services based upon section 361.5, subdivision (b)(2) -- that her mental disability rendered her unable to utilize the services. Petitioner's counsel filed documents representing that petitioner was undertaking services in South Dakota including attending church, receiving state medical and food assistance, receiving medical care from a primary care doctor, undergoing a psychological evaluation, participating in sports, attending a behavior management center, and looking for a job.

The mental health expert evidence the juvenile court had before it was: (1) an August 2009 psychiatric evaluation, prepared by North Valley Behavioral Health in conjunction with a section 5150 hold; (2) an October 2009 psychiatric evaluation, history and physical, prepared by North Valley Behavioral Health in conjunction with a section 5150 hold; (3) two medical record reports from Behavior Management Systems of South Dakota; and (4) a January 4, 2010, psychological assessment prepared by

William A. Moss, Psy.D., a licensed clinical psychologist in South Dakota.

The reports generally agree that petitioner has bipolar disorder (perhaps with psychotic features) and has been medication noncompliant. Of the reports provided to the court, only the psychological assessment prepared by William A. Moss contains any opinion of petitioner's ability to parent the minor or ability to benefit from assistance. In that regard, however, Moss concludes that petitioner "may be able to parent effectively with assistance and supervision" but that a final determination on the matter cannot be adequately assessed until petitioner addresses her bipolar disorder. Moss's report does not contain an opinion regarding whether, with services, petitioner may be able to care for the minor within the 12-month timeframe. The report also did not indicate what previous medical records, if any, he had reviewed in performing his assessment.

The social worker's contact with petitioner since the jurisdiction hearing was through petitioner's father, who acted as petitioner's "point person." Due to petitioner's refusal to sign necessary releases, the social worker was unable to obtain any information from or about the services petitioner claimed she was utilizing in South Dakota. The social worker testified that, due to petitioner's refusal to sign releases, she was not permitted to contact any of the providers to request or provide information.

At the close of evidence, the juvenile court noted that it did not have two expert opinions regarding petitioner's mental disability as required under section 361.5, subdivision (b)(2). The court went on to state: "I don't think I need that for this case history to make my findings and orders with regard to the request [to bypass services]. I just don't want to make error by doing it under 361.5(b)(2) when I don't think I have the appropriate evidence." The court expressly stated it was not bypassing services pursuant to section 361.5, subdivision (b)(2), but instead, stated its "findings will be based on the entire record, specifically the recitation of facts appearing on Page 13 and 14, starting on Line 17, as far as her history with this case in taking services and those types of things. I think that in and of itself is sufficient for the Court to make the findings and adopt the orders contained in the report [bypassing reunification services], save and except, as I stated, not 361.5(b)(2)."<sup>2</sup> The court then set a section 366.26 hearing, but

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<sup>2</sup> These facts included, inter alia: (1) that petitioner is suffering from a mental disability that is believed to render her incapable of participating in services; (2) that petitioner refused to participate in mental health assessments in July, August, and October 2009; (3) that petitioner did not take medication as prescribed; (4) that petitioner was admitted to North Valley Behavior Health in August 2007 and September 2009; (5) that petitioner was placed on 24-hour observation at Tehama County Crisis Unit in August 2009 and twice in October 2009; (6) that petitioner has axis I bipolar disorder with psychotic tendencies and cannabis dependency; (7) that petitioner has struggled with mental health issues since her early adult years; (8) that petitioner has been offered both voluntary and court-ordered services but has refused to engage in the services and comply with appointments (including a psychological evaluation,

strongly urged petitioner "to sign whatever waiver she would need to sign so CPS here can get all the information" if she wanted the court to consider changing its order.

#### DISCUSSION

Petitioner contends she was wrongfully denied reunification services because the juvenile court's denial of services was not based on any of the grounds set forth in section 361.5, subdivision (b). The Department argues that reunification services were properly denied based on the disentanglement doctrine. We agree that the juvenile court impliedly and justifiably applied the disentanglement doctrine to deny petitioner services.

Following the removal of a minor from parental custody, the parent is ordinarily provided with reunification services. (§ 361.5, subd. (a).) The juvenile court may deny a parent reunification services at the disposition hearing provided certain conditions described in section 361.5, subdivision (b), are satisfied. In those circumstances, "the general rule favoring reunification is replaced by a legislative assumption that offering [reunification] services would be an unwise use of governmental resources." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478; *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.)

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mental health services, and medication support) making progress in this matter impossible; and (9) that it is unknown whether petitioner has the cognitive capacity to care for a child. It also incorporated an incident and statement log for dates between August 16, 2009, and October 27, 2009.

Here, it was alleged that services may be inappropriate under subdivision (b)(2) of section 361.5. That subdivision provides: "Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence . . . [¶] [t]hat the parent . . . is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders . . . her incapable of utilizing those services." The opinions of two mental health experts are required to deny services under section 361.5, subdivision (b)(2). (§ 361.5, subd. (c); Fam. Code, § 7827.)<sup>3</sup>

As acknowledged by the juvenile court, however, the Department was unable to provide evidence from two qualified experts in this case. And, as also found by the juvenile court, this absence of evidence was due to petitioner's refusal to comply with the appointments and services, including the court-ordered appointments with the Department and the psychological evaluation. She may not benefit from this contumacious behavior by insisting on relief from the court.

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<sup>3</sup> Family Code section 7827 defines "[m]entally disabled" to mean "a parent or parents suffer a mental incapacity or disorder that renders the parent or parents unable to care for and control the child adequately." (Fam. Code, § 7827, subd. (a).) Evidence of two qualified experts is required to support a finding the parent is mentally disabled. (Fam. Code, § 7827, subds. (c) and (d).) Additionally, in order to justify denial of services to a mentally disabled parent, expert evidence must also establish that, even with services, the parent is unlikely to be capable of caring for the child within [12 months]. (§ 361.5, subd. (c).)

"A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]" (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277.) This principle extends to dependency proceedings and to conduct that, as in this case, frustrates the ability of another party to obtain information it needs to protect its own legal rights. (*In re C.C.* (2003) 111 Cal.App.4th 76, 84-85.)

"Application of the disentitlement doctrine is particularly appropriate in the context of reunification services.

'Reunification services are a benefit, and there is no constitutional "entitlement" to these services.' (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 476[.])" (*In re C.C., supra*, 111 Cal.App.4th at pp. 85-86.) As aptly stated in *In re C.C., supra*, "Mother's refusal to participate in a psychological evaluation in this case is comparable to the conduct of the parties in the above cases, which was held to bar their right to seek the assistance of the courts. Mother's conduct makes it impossible for the court to perform its obligation to determine, pursuant to section 361.5(b)(2), whether her mental disability renders her incapable of utilizing reunification services. Mother's conduct also interferes with the legal rights of Minor. If Mother is, in fact, incapable of utilizing services, Minor is entitled to have her case proceed to the permanency planning stage without the delay of 12 months or more that must be afforded if reunification services are provided to Mother.

[Citation.] 'While this may not seem a long period of time to an adult, it can be a lifetime to a young child.' [Citation.] Mother . . . is 'entirely responsible for paralyzing the court's ability to implement the procedures intended to benefit the interests of the dependent minor.' [Citation.]" (*In re C.C.*, *supra*, 111 Cal.App.4th at p. 85.)

The requirement of two expert evaluations incorporated into section 361.5, subdivision (b)(2), implicitly assumes a cooperative parent who will sign the necessary releases and submit to the required evaluations. (*In re C.C.*, *supra*, 111 Cal.App.4th at p. 85.) "Where, as here, the parent is not cooperative, a court has the inherent power under the disentitlement doctrine to bar that parent from seeking further assistance from the court, including the provision of reunification services." (*Ibid.*) Petitioner is "not . . . permitted to create a classic Catch 22<sup>4</sup> situation in which the court must extend her services because it cannot determine whether, in fact, she is actually entitled to them." (*Id.* at p. 86.)

In this case, the court noted that it could not evaluate the matter under section 361.5, subdivision (b)(2). Instead, it found the denial of services appropriate under the totality of the circumstances -- those circumstances being that petitioner had refused to meet with and cooperate with the Department, sign the necessary waivers, and attend the court-ordered

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<sup>4</sup> Heller, Catch 22 (1961).

psychological evaluation. Petitioner's own behavior prevented the Department and the court from performing their duties and protecting the rights of the minor.

Likewise, with respect to petitioner's argument that the court's order did not sufficiently take into account her engagement in services in South Dakota, we note that, once again, to the extent this may be the case, it was a result of petitioner's obstructive behavior. Petitioner's refusal to sign the necessary releases prevented the Department and the court from adequately evaluating the services or petitioner's participation. Thus, that "the [D]epartment never considered any of the strides [she] was making" is of petitioner's own doing.

In sum, the juvenile court's exercise of its inherent power to deny petitioner reunification services under the disentanglement doctrine was appropriate.

#### DISPOSITION

The petition for extraordinary writ is denied.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

ROBIE, J.